

S.K. Sahdev Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-25-2006

Judge : J Balasundaram, Vice-, A T K.K.

Appellant : S.K. Sahdev

Respondent : Commissioner of Central Excise

Judgement :

1. We have heard both sides on the applications for waiver of pre-deposit of duty of Rs. 97,55,466/- and penalty of Rs. 10 lakhs imposed on M/s. PMS Diesels penalty of Rs. 5 lakhs on M/s. PMS Enterprises; penalty of Rs. One lakh on Shri S.K. Sahdev; penalty of Rs. Two lakhs on R.M. Dhiman and penalty of Rs. 50,000/- on Shri K.M.Unad-kat. The period of dispute is 1990-91 to 1994-95.

2. The demand has been confirmed on M/s. PMS Diesels as a result of holding that their clearances are required to be clubbed with the clearances of M/s. PMS Enterprises and since the total clearance value exceeds the ceiling limit prescribed in SSI Notification No. 1/93-C.E., dated 1-3-1993, they are not entitled to the benefit of SSI Notification. The goods in question cleared by M/s. PMS Diesels are LP sets, crankshafts and connecting rods.

3. As regards Liner Piston set (LP set), we find from the show cause notice that the activity carried out is purchase of various parts and components i.e. Liner, Piston, Piston ring, Circlips, Gudgeon pin, Rubber-ring. The cylinder liner is inspected and lubricated by the above units. The piston which has grooves on its

body, are also inspected and lubricated. Thereafter, the circlips are fitted into the grooves on the body of the piston. The gudgeon pin is then fitted on the piston. The piston so fitted with the circlips and gudgeon pins is inserted into the cylinder liner. The small rings and rubber rings are kept inside the piston for use at the customer's end. Prima facie, this process/activity is identical to that carried out by M/s. Adico to whom also show cause notice was issued on the ground that such activity amounts to manufacture, and the proceedings initiated under that show cause notice against them were dropped vide Order-in-Original No.12/Commr/1996 dated 29-11-1996.

3. As regards crankshaft and connecting rods, prima facie, we see substance in the submission of the applicants that since the activities were carried out through job workers, they are to be treated as the manufacturers and duty can be raised and confirmed on them and not on M/s. PMS Diesel, particularly in the absence of the finding that the work was done not through independent job workers but through hired labourers.

4. Since prima facie, the activity of assembly of LP sets does not amount to manufacture on the basis of the order in the case of M/s.

Adico and since prima facie, it is the job workers who are to be treated as the manufacturers and not M/s. PMS Diesel, the issue of clubbing of clearances prima facie, loses relevance, as it is only if the activities prima facie are held to be manufacture and if the manufacture has been held to be done by M/s. PMS Diesels, then the question of clubbing clearances and denying benefit of SSI Notification will assume significance.

5. We, therefore, hold that a strong prima facie case for total waiver has been made out by the applicants and hence we waive the pre-deposit of the duty and penalties imposed on all the applicants and stay recovery thereof, pending these appeals.